



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 175020

PRELIMINARY RECITALS

Pursuant to a petition filed on June 15, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on August 16, 2016, by telephone.

The issue for determination is whether the respondent correctly modified petitioner's request for personal care worker (PCW) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], RN BSN (written appearance only)
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's current diagnoses include paralytic syndrome and mixed incontinence. His functional limitations include endurance, ambulation, dyspnea with minimal exertion, muscle spasms and

tremors. He requires assistance with activities of daily living (ADLs), including bathing, dressing, compression stocking placement/removal, grooming, mobility, toileting, transfers, and range of motion. His mother is his care worker.

3. On April 6, 2016, Independence First requested authorization for 35 hours per week PCW services for a one-year period effective June 1, 2016, PA no. [REDACTED]. By a letter dated May 3, 2016, the DHCAA granted 21.25 hours per week (additional "as-needed" time was granted as requested).
4. The DHCAA granted daily time for bathing, dressing (lower body), compression stocking placement/removal, grooming, mobility, toileting, transfers, and range of motion. No time was given for eating or for range of motion exercises. No time was entered for dressing upper body, eating, mobility, or medication assistance.

DISCUSSION

Personal care services are "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Wis. Admin. Code, §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3. At hearing on the issue of modification of a PA request, it is the burden of petitioner or the provider to establish the need and appropriateness of the requested services. Petitioner has done neither based on this record.

The DHCAA approved 21.25 hours of PCW services each week for the petitioner. To reach this figure the DHCAA initially used the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations. The DHCAA then adjusted the tool's results based upon Department maximum time allowances and considerations of petitioner's medical records.

The reason that the DHCAA now is looking closely at PCW requests is evident in a case such as this one. Petitioner did not provide specific times necessary for providing the PCW services, but instead testified

that more time was needed because of petitioner's unique circumstances and needs. Nothing was quantified. Without a better way to quantify the time for services, however, I find it difficult to add more time. The problem with family members being the personal care workers is that they may take more time to do care tasks due to extra carefulness or inexperience, and thus the Department has set maximum times for a typical care worker. The respondent noted that it took into consideration the following in the areas where no time was allotted: the petitioner's screener reported that petitioner indicated that he is able to dress his upper body with no significant complications or difficulties; the screener reported that petitioner is independent in eating; and petitioner's medical records indicate that he is able to independently operate his Catalyst 5 ultralight manual wheelchair.

Petitioner should be aware that if he can show a medical need for more time, he can always request an amendment for additional time with evidence to show the need for the additional time. However, based upon the evidence before me, I cannot conclude that the reduction to 21.25 hours per week was wrong.

CONCLUSIONS OF LAW

The DHCAA's modification of the request for PCW hours was appropriate based upon petitioner's medical needs and the Department's policies for PCW approval.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 14th day of September, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 14, 2016.

Division of Health Care Access and Accountability